

PDR NO. PD-0797-17

IN THE
TEXAS COURT OF CRIMINAL APPEALS
AT AUSTIN, TEXAS

FILED
COURT OF CRIMINAL APPEALS
1/4/2018
DEANA WILLIAMSON, CLERK

DAVID ARROYO,
Appellant/Respondent
VS.
THE STATE OF TEXAS,
Appellee/Petitioner

*From the Court of Appeals
For the Fourth Court of Appeals District of Texas
No. 14-15-00595-CR
And the 399th District Court of Bexar County
No. 2013CR8109*

**APPELLANT'S RESPONSE TO NOTICE OF LATE BRIEF AND
FIRST MOTION FOR FIRST EXTENSION OF TIME TO FILE BRIEF**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Now comes DAVID ARROYO, Appellant in the above styled and numbered cause, and Responds to this Court's Notice to File Response for Late Brief and requests a first extension of 45 days to file the brief on this case, and

would show the following:

I.

On August 16, 2015, the Appellant was convicted of six counts of indecency with a child in Cause No. 2013CR8109 in the Criminal District Court, 399th Judicial District of Bexar County, Texas, and sentenced to confinement for twenty years in Texas Department of Criminal Justice, Institutional Division and a \$5,000 fine, with counts one through five to run concurrently with each other and counts six to run consecutively to the others.

II.

The Appellant timely filed notice of appeal, and the appeal was styled David Arroyo vs. The State of Texas, Cause No. 14-15-00595-CR, in the Court of Appeals for the Fourth Court of Appeals District of Texas. The Fourth Court of Appeals issued its original opinion on May 24, 2017. On June 1, 2017, the State filed a motion for rehearing. On July 19, 2017, the court of appeals overruled the State's motion for rehearing, but it vacated its earlier judgment, withdrew its original opinion and issued a new judgment and opinion. The court of appeals affirmed appellant's convictions relating to touching K.E.'s genitals, but it reversed the trial court's judgments on counts two, four, and six, rendering acquittals.

III.

This Court granted State's Petition for Discretionary review on October 25, 2017, oral argument permitted. The State's brief was originally due with this Court by November 25, 2017. The Appellant's brief is due 30 days after the timely filing of the State's brief, which would have been December 25, 2017.

Appellant filed Notice of Appearance in this case on November 7, 2017. The State's brief in this case was filed early on November 8, 2017. Therefore, Appellant's deadline for filing a response brief date for timely filing became December 8, 2017. Appellant did not file a brief on this due date.

IV.

On December 20, 2017, this Court issued a notice of late brief and directed the undersigned counsel to file a brief along with a Motion for Extension of Time. Counsel has been unable to complete the brief by the due date.

Appellant relies on the following facts as good cause for the requested extension:

In the past 30 days, the undersigned attorney has had a surgical procedure with an additional procedure scheduled in January. Counsel for Appellant called the Court of Criminal Appeals to inform the court of the circumstances and that Counsel will be filing this Appellant's first request for an extension of time.

V.

This extension of time is necessary to give the Appellant's attorney time to prepare its Brief to this Honorable Court. Appellant is requesting an extension of time of at least 45 days, from its currently date of January 3, to file its brief. This extension of time is necessary to give the Appellant's attorney time to conclude preparation of its Brief to this Honorable Court.

Appellant's counsel has at all times during this matter exercised diligence in providing timely and professional conclusions in all matters currently in progress, and Appellant and expects to do the same in this Court. A forty-five day extension would enable counsel to do accomplish the same in this Court the other courts and matters to which counsel has commitments.

VI.

Lastly, Appellee would show that this request for an extension of time is not being sought for the purposes of delay but rather that justice may be done. The requested extension will not cause prejudice to any party.

WHEREFORE, PREMISES CONSIDERED, Appellant prays that this Court grant this Motion to Extend Time to File Appellant's Brief, and extend the deadline by forty-five days from the present date to February 12, 2018, and for such other and further relief as the Court may deem appropriate.

Respectfully submitted,

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By: /s/ Andrea C. Polunsky
Andrea C. Polunsky
State Bar No. 16107600
Attorney for DAVID ARROYO

CERTIFICATE OF SERVICE

I certify that the above and foregoing Motion was sent to Bexar County Criminal District Attorney's Office attorneys for the State of Texas by e-filing, on the 3rd day of January, 2018.

/s/ Andrea C. Polunsky
Andrea C. Polunsky